Supreme Court of the United States.

OCTOBER TERM, 1874.

No. 152.

ANDREW J. GILL, No. 1,

vs.

THE UNITED STATES.

Brief of Plaintiff and Appellant.

DURANT & HORNER,

FOR APPELLANTS.

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Brief of Plaintiff and Appellant.

The facts of the case are set forth on pp. 6 and 7 of the Record.

The opinion of the Court of Claims is set forth in full in 7 Ct. Claims R., page 522.

The questions arising in the case are:

First. Can a man contract validly with the United States in any other name than his own?

Second. In case he cannot legally so contract, but still does contract in the name of another, can the United States, after benefitting in whole or in part by the contract, repudiate it, and say it was void from the beginning?

Third. Can the United States, after dismissal of the agent's suit to hold the Government responsible for damages for breach of contract, on the ground that there was no contract between the United States and the agent, plead this dismissal as *res judicata* against the real principal when he sues?

ASSIGNMENTS OF ERROR.

1. The lower court erred in decreeing plaintiff bound by the judgment of *dismissal* in Wheeler's case. (5th Court Claims R., 508.)

2. And in deciding that all contracts with the United States must be signed by the contracting parties, on pain of nullity absolute.

3. And that after executing and profiting by the contract, the United States could resist the payment of damages for a partial violation of it.

The Court misapplied the principles of *the thing adjudged*. In Wheeler's case, their decision was, that there was not and could not be any agency in Wheeler to make the contract with the United States for Gill. "Gill's agency was only colorable, while he was in fact the real party in interest in the contract." 5th C. Claims, 509.

If the contract be absolutely null, as the Court holds, there can be no legal relations between Gill and Wheeler, and all that is said about *privity* is immaterial to the question. Besides, the judgment was not rendered on the contract in the Wheeler suit, as is said by the Court in 5th C. Claims R., 509, and Gill was no party thereto. The judgment was for a *quantum meruit*.

The grounds on which the Court of Claims decreed the absolute nullity of the contract, were:

That Ford *vs.* Williams, 21 Howard, 287, and Ramsdell's case, 2 C. Claims R., 508, were no longer law, because the acts of June 2, 1862, and July 17, 1862, (12 S. L., 411 and 597,) as well as the act of July 4, 1864, (15 S. L, 397,) governed this case.

That in the light of these statutes, the real contracting party must comply with the mode and manner in which contracts like this *shall* be made; all other modes and manners are excluded: that *his* signature is indispensably necessary because he makes himself a part of the land or naval forces of the United States.

We contend that even admitting *a. g.* that the quoted statutes are in force, (a fact which we greatly doubt,) they do not sustain the decision.

Neither Gill nor Wheeler ever made himself a part of the land or naval forces of the United States. Neither allegation nor proof of this fact, if it were one, is to be found in the record. Stuart's case, 18 Wall., 84, is conclusive upon this point.

We pray for a reversal and a decree for $4,226.40.

Respectfully submitted.

DURANT & HORNOR,

For Appellants.

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Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

First. We submit that this appeal cannot be heard, for want of compliance with paragraph 2, of rule 1, of the *Order* by this court in reference to appeals from the Court of Claims: 1. Because the record does not present Exhibit A mentioned in the third *finding of fact* by the Court of Claims; and 2, because the record presents no *conclusions of law* by the Court of Claims. (Rules, &c., p. 25.)

In this connection we ask that the appeal be dismissed.

If we be mistaken in this, we submit—

Secondly. That Gill is bound by the judgment in Wheeler's case, mentioned in the findings of fact in the record.

(*a.*) It is *found* in the present case (Record, p. 7, 3d *finding*) that Gill *instituted that suit individually, and prosecuted it for his own benefit.*

In such case, it makes no difference that he is not named upon the record.

Chirac *vs.* Reinecker, 613, p. 622.

Smith, L. C., (1866,) 2d, 821, &c.

(*b.*) As to the *subject-matter* of that suit, the third finding is, that the contract sued upon in Wheeler's name is "the same as that alleged by the claimant in this case." It was also found (5th) that that cause was heard upon its merits, and that as Wheeler had transferred the contract to Gill he [Wheeler?] could not, because of the provisions of the act approved July 17, 1862, recover thereon, but as it appeared that the United States had used a portion of the wood, whose delivery was the subject-matter of the contract, this claimant, [Wheeler?] was entitled, on grounds of quantum meruit, [valebat?] to recover for its value, and thereupon the court gave judgment "that the said Ernest D. Wheeler do have and recover of and from the United States the sum of $589.60."

We submit that *upon the record* in Wheeler's case as disclosed in the findings—no matter what may have fallen (inadvertently or otherwise) from the judge who delivered the opinion, and no matter what appears in the facts found by the court acting as a jury—it must be taken that Gill (through Wheeler) has already recovered judgment upon the breach as *stated in his petition*, and consequently that the damages claimed there have passed *in rem judicatum*, and so cannot be sued upon again.

Although there be nothing *technical* in the forms of pleadings adopted for the Court of Claims, yet the general principle of requiring a party to stand by that which he has once, for purposes of gain, and with the result of gain, asserted in that court, seem to make a necessary part of its maxims. So likewise the principle that its records are the exclusively admissible wit-

nesses of its proceedings, unless upon an application to *amend* them.

In this connection, we quote passages from the acts which provide for the forms in which claimants shall present their cases, viz:

"The said court shall hear and determine all claims founded upon any law, &c., which may be suggested to it by *a petition filed therein.* * * * It shall be the duty of the claimant in all cases *to set forth a full statement of the claim, &c., specifying also what person or persons are owners thereof, or interested therein*, and when and upon what consideration such person or persons became so interested." (Act of 1855, ch. —, sec. 1, 10 Stat., 612.)

"Any petition filed under this act [one of general provision for the Court of Claims] shall be verified by the affidavit of the claimant, &c., stating that no assignment or transfer of said claim, or any part thereof or any interest therein, has been made, except as in said petition stated: that said claimant is justly entitled to the amount therein claimed." (Act of 1863, ch. —, sec. 12, 12 Stat., 765.)

The rules of practice adopted by the court are to the same effect, (6 Court of Claims, pp. V, VI, &c.,) but as a non-observance of these in any particular case cannot have the effect attributable to non-observance of the statutory provisions above, we shall omit them.

We submit, then, that, inasmuch as the Court of Claims has, by the above acts, no jurisdiction of a claim not presented by a petition in favor of some person named, directly or otherwise, as claimant, Wheeler's case, above mentioned, was one in favor of *Wheeler alone*, UPON THE BREACH ASSIGNED ALONE, *that the money recovered therein was recovered upon such breach alone, and that Gill is chargeable, by a presumption*

of law not to be contradicted, with having actively contributed to that result. He is therefore bound by it—the case being the converse of Stowe's case, 19 Wall., 13. See 2d Smith, L. C., pp. 796, top, and 799, last, paragraph.

It seems that it is necessary to take this position in order to support the judgment given, at Gill's instance, in Wheeler's case: for—

The suggestion that a *quantum valebat in favor of Wheeler* arose upon proof of the use by the United States of *Gill's wood*, is wholly inadmissible; and—

It is equally inadmissible to suggest that Wheeler's name was used by Gill in order to recover upon a quantum valebat *for wood wholly furnished by Gill;*—

The parties to the special contra t, and to the quantum valebat, were different persons. Their causes could not be *joined* in the same case;—

It is contradictory at once to the general rules of pleading (as a science) and to the provisions of the above acts, to suppose that in a suit by Wheeler alone the merits of Gill alone could be a foundation for a judgment rendered in favor of Wheeler, upon supposition that he would turn over the proceeds to Gill!

We submit, therefore, that the judgment in the former case is to be maintained only by referring it to the petition; and that Gill, as *co-operator*, is bound by its conclusion, *as thus referred*, upon the breach of contract now set up.

If he were dissatisfied with the *findings* and *conclusions* of the court in Wheeler's case, he should have withdrawn his proceedings before judgment. He could not pocket the $589.60 therein adjudged, without sub-

jecting himself to every burden incident to such transaction, either by the rules of right reason, or by the provisions of the above acts of Congress, or by a due regard to the proper protection of the public against claims having the suspicious quality of being loosely defined, both as to subject-matter and as to owner.

Thirdly. Gill cannot sue the United States upon a contract made by them with Wheeler.

In putting the latter forward to execute and subscribe in his own name a contract to which Gill alone was party, he committed an obvious fraud upon the act of 1862, ch. 93, sec. 1, (12 Stat., 411.) There is clearly a public policy declared in this, and Gill wilfully defeated it. He knowingly prevented Captain Thayer from performing his duty of having the real contracting parties sign *his* name at the end of this contract. In such case it is not for Gill to make light of the evil consequences of his act, or even to require us to specify those consequences, although some of them are not far to seek.

The difference between the wording of the above act (viz: "*Such contracts to be reduced to writing and signed by the contracting parties with their names at the end thereof*") and that of the celebrated Statute of Frauds, which had a similar end in view, and was no doubt familiar to the draftsmen of the act of 1862, (viz: "The agreement, &c., shall be in writing and signed by the party to be charged therewith, *or some other person thereunto by him lawfully authorized,*") makes it plain that the signature "E. D. Wheeler" cannot be justified on the ground that it is the signature of a

person thereunto by "A. J. Gill" lawfully authorized. The statute is peremptory, and gives no such authority. In view of the fact that it was drawn in the very light of the Statute of Frauds, this omission is significant.

The act of 1862, ch. 200, sec. 16, (12 Stat., 596,) is not affected by Stuart's case, (18 Wall., 84.)

The latter decision is special, viz: That within the meaning of the act of 1849, (9 Stat., 414,) giving compensation for property lost or destroyed, &c., Stuart was not "in the military service." Whether he (or Gill) might not have been "a part of the land forces," so as to be subject to *the rules and regulations for their government*, (act of 1862,) seems plainly a question to be decided otherwise. Here Gill evaded that statute by declining to appear as contractor.

Fourthly. In discussing the second topic we have already assigned reasons for holding that Gill (through Wheeler) has already been satisfied for any breach of contract that has been suggested or proved.

GEO. H. WILLIAMS,
Attorney General.
S. F. PHILLIPS,
Solicitor General.